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Supreme Court of the United States

OCTOBER TERM, 1943.

Nos. 548 and 549.

THE COLUMBIAN NATIONAL LIFE INSURANCE COMPANY, A CORPORATION, PETITIONER,

VS.

MARGUERITE W. KEYES, RESPONDENT.

THE COLUMBIAN NATIONAL LIFE INSURANCE COMPANY, A CORPORATION, PETITIONER,

VS.

MARGUERITE KEYES, INCORPORATED, RESPONDENT.

BRIEF FOR RESPONDENTS MARGUERITE W. KEYES AND MARGUERITE KEYES, INCORPORATED, IN OPPOSITION TO PETITION FOR CERTIORARI.

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A.

OPINION DELIVERED IN THE COURT BELOW.

The opinion of the United States Circuit Court of Appeals for the Eighth Circuit, The Columbian National Life Insurance Company vs. Marguerite W. Keyes and The Co-

lumbian National Life Insurance Company vs. Marguerite Keyes, Incorporated (not yet officially reported), is reported in 138 F. 2d 382, 385 (T. 281-287).

B.

JURISDICTION.

The jurisdiction of this Court is invoked by Petitioners under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925, Ch. 229, Sec. 1, 43 Stat. 938 (Title 28, U. S. C. A., Sec. 347), and under the same Act, Ch. 229, Sec. 8, 43 Stat. 940 (Title 28, U. S. C. A., Sec. 350), and under *Ruhlin* v. *New York Life Insurance Company*, 304 U. S. 302, 58 S. Ct. 860, 82 L. Ed. 1920. The date of the judgment of the United States Circuit Court of Appeals for the Eighth Circuit sought to be reviewed was October 25, 1943 (T. 287, 289). Motion for Rehearing was overruled and denied November 16, 1943 (T. 307).

C.

STATEMENT OF THE CASE.

The Petitioner, The Columbian National Life Insurance Company, has been continuously licensed to do business in the State of Missouri since the year 1904 (T. 103). On October 2, 1939, the Insurance Department of the State of Missouri, through its then Superintendent, Ray B. Lucas, addressed a communication to all foreign insurance companies licensed in Missouri (including Petitioner) complaining of the practice of certain foreign insurance companies of using so-called "binding receipts" in order to make foreign contracts out of insurance contracts, the applications for which had been taken in Missouri and the policy thereon delivered in Missouri, to the detriment of Missouri policyholders. The Insurance Department requested that said foreign insurance companies (including

Petitioner) state whether or not they had been following the practice, and to indicate their intentions in that respect in the future. The Insurance Department warned that, if the advance collection of premiums was to be used to the disadvantage of the insurance applicant, then the Department would insist either that no premiums be collected before delivery of the policy, or that the policy definitely state that it is subject to the laws of Missouri (T. 117, 118). Said communication of the Missouri Insurance Department went into the hands of Mr. Frederick H. Nash, General Counsel and Vice President of Petitioner (T. 114, 115). On October 21, 1939, by letter, Petitioner's General Counsel wrote the Superintendent of Insurance of Missouri as follows (T. 120):

> "Your circular letter of October 2nd to foreign life insurance companies licensed in Missouri is acknowledged.
>
> Although I have been General Counsel of this company since 1907, I am unable to recall or find a case in which this company has in Missouri contended that a life policy issued and delivered in Missouri was not a contract subject to the laws of the State of Missouri.
>
> In respect to the future, I shall, of course, be guided by the decisions of the state courts of Missouri, of the Eighth Federal Circuit, and of the Supreme Court of the United States."

Thereafter, and under date of February 15, 1940, the Missouri Insurance Department ordered all foreign insurance companies licensed in the State of Missouri, effective March 15, 1940, to include in all applications for life insurance policies filed and solicited in the State of Missouri, the following (T. 112):

> "Any policy of insurance issued upon this application shall be considered a Missouri contract and its terms shall be construed in accordance with the laws of the State of Missouri unless otherwise specified herein by the applicant."

On March 4, 1940, the Petitioner, through its Actuary, wrote the Superintendent of Insurance of Missouri as follows (T. 113):

> "In accordance with your bulletin of February 15, we are filing a copy of our application with a rubber stamp impression of the desired statement. If this meets with your approval, we will use this stamp on all present forms of application hereafter used in Missouri."

Thereafter, and on October 29, 1940, George T. Keyes, the husband of Respondent Marguerite W. Keyes, signed a written application for a $25,000 policy of five-year term insurance, in Kansas City, Missouri (T. 65), and on the 30th day of October, 1940, pursuant to said application for insurance, was examined by the medical examiner of the Petitioner Insurance Company in Kansas City, Missouri (T. 65), and as of October 28, 1940, the Petitioner issued its policy No. 261084 on the life of said George T. Keyes in the sum of $25,000, Marguerite W. Keyes, wife of the Insured, being named as beneficiary (T. 57-65). Said policy of insurance was physically delivered to the insured in Kansas City, Missouri, by Mr. John Mullane, the General Agent of the Petitioner (T. 143). The Insured, at the time of the application, paid $135.75 on the first yearly premium of $512 (T. 65).

Thereafter, and on June 16, 1941, George T. Keyes, as the proposed Insured, signed a medical statement and was examined by Dr. Glen C. Carbaugh, Petitioner's medical examiner, respecting further insurance, and on June 17, 1941, he, as the proposed Insured, and Markay, Inc., as applicant for the insurance, signed an application for a policy of insurance of the Petitioner in the face amount of $10,000 all in Kansas City, Missouri (T. 217), and under date of the 16th day of June, 1941, the Petitioner issued its insurance policy pursuant to said application (T. 205-217) and said insurance policy bearing No. 264444

with Markay, Inc., a Missouri corporation, as the designated beneficiary was physically delivered to the Insured in Kansas City, Missouri, by Mr. John Mullane, the General Agent of the Petitioner (T. 143). The Insured, at the time of signing the application, paid the sum of $61.31 of the yearly premium of $231.40 (T. 217).

Both insurance policies so issued and delivered by the Petitioner had printed in bold type in each application the following provision (T. 65, 217):

> "Any policy of insurance issued upon this application shall be considered a Missouri contract and its terms shall be construed in accordance with the laws of the state of Missouri unless otherwise specified herein by the applicant."

Immediately below the above quoted provision in each application, and directly over the signature of the Insured appeared the following provision:

> "3. That acceptance of any policy issued on this application shall operate as a ratification of any changes or amendments noted by the company in the space entitled 'Corrections and Amendments.'"

In each of the above policies under the general heading "Benefits and Provisions" under numbered Paragraph 6 appear the following policy provision (T. 61, 209):

> "Protection by Statute. This policy and the application therefor constitute the entire contract between the parties and all statements made by the Insured in the application shall, in the absence of fraud, be deemed representations and not warranties, *and no statement shall avoid the policy or be used in defence to a claim under it unless contained in the written application and a copy of the same attached thereto*" (Italics Ours).

Both policies of insurance were in full force and effect on the 10th day of April, 1942, the day of the death of the Insured, George T. Keyes. The Insured died as the

result of a gunshot wound received by him on the 23rd day of March, 1942.

Under date of April 17, 1942, due proof of the death of the Insured under each policy was furnished the Petitioner on the company's forms as furnished the beneficiaries by the General Agent of the company (T. 146). Thereafter, and under date of May 7, 1942, written demand was made upon the Petitioner for the payment in full of each of said life policies (T. 146, 147). Thereafter, and on May 16, 1942, written demand was again made on the Petitioner, by Registered Mail, for the payment in full of the proceeds under each of said policies. Thereafter, and under date of May 21, 1942, Mr. Frederick H. Nash as Vice President and General Counsel of the Insurer Petitioner advised in writing that he had "advised the company to resist payment of both the life policies and the accident policy" (T. 149). Thereafter, and on May 28, 1942, your Respondents filed suits on each of the above insurance policies in the District Court of the United States for the Western Division, Western District of Missouri at Kansas City.

Your Respondents never knew and were never advised by the Petitioner, until the Petitioner filed answer to Respondents' petitions on the policies, why the Petitioner was resisting payment and was refusing to pay the proceeds of the life insurance to the Beneficiary Respondents.

The original, first amended, and second amended answers filed by the Petitioner to Respondents' petitions in the Trial Court below were identical in wording and the Petitioner's original answer to Respondents' petition on the $25,000 policy, filed by the Petitioner on July 1, 1942 (T. 69-74 inclusive), and its answer to Respondent's petition in the $10,000 suit as filed on the same date (T. 221-226 inclusive), each admitted all the allegations in Respondents' petitions except the allegation that the policy was made, executed and delivered to the Insured in

the State of Missouri and said original answers set up the following legal defenses:

(1) That the contract of insurance was a Massachusetts contract because of an alleged binding premium receipt; and that the provision inserted in the policies providing that the contract should be a Missouri contract and construed under the laws of the State of Missouri was void because "defendant avers that said stamped provision on said application was not incorporated in said application as the free act and deed of this Defendant but Defendant was wrongfully compelled and coerced to stamp said provision on said application by the Superintendent of Insurance of the State of Missouri."

(2) That the settled public policy of the State of Massachusetts holds that suicide is a wicked crime and that the policy being a Massachusetts contract, the provision limiting the company's liability to the amount of the reserve because of death from suicide within two years of the date of the policy, bars Plaintiff from recovering more than the amount of said reserve.

(3) That the stamped provision in the policy providing that the contract should be considered a Missouri contract and construable under the laws of Missouri is void as being contrary to and in conflict with the law and public policy of the State of Massachusetts.

(4) That Sec. 5851, R. S. Mo., 1939, the Missouri Suicide Statute, is unconstitutional and void in that it violates Section 28, Article IV, of the Constitution of Missouri for 1875, as not being clearly expressed in the title of the act.

Thereafter Respondents filed identical Motions to Strike out Parts of Defendant's Answer (the foregoing alleged legal defenses) combined with Respondents' Motions for Judgment on the Pleadings (T. 74-79 inclusive and T. 221-226 inclusive).

Thereafter, Petitioner in each case filed their first amended and second amended answers setting up the same legal defenses as in its original answers with the exception that Petitioner abandoned its claim that it had inserted the Missouri construction provision in the applications for insurance because it was wrongfully compelled and coerced to do so by the Superintendent of Insurance of the State of Missouri.

On December 11, 1942, Petitioner filed its second amended answers in each of said cases (T. 91-96) and Respondents refiled Motions to Strike out the Legal Defenses in Petitioner's second amended answers, and for Judgment on the Pleadings, and on January 27, 1943, the District Court entered an Order and Judgment in each case, sustaining Respondents' combined motion in each case and for judgment on the pleadings and adjudging that the Plaintiff (Respondent) recover from the Defendant (Petitioner) in the case of *Marguerite W. Keyes* v. *The Columbian National Life Insurance Company*, the sum of $25,000 with interest thereon, and the further sum of $2,500 as a penalty for vexatious refusal to pay, and the further sum of $5,000 as and for attorneys' fees (T. pp. 27-28), and adjudging in the case of *Marguerite Keyes, Incorporated*, v. *The Columbian National Life Insurance Company*, that the Plaintiff (Respondent) have and recover from the Defendant (Petitioner) the sum of $10,000 with interest thereon, and the further sum of $1,000 as a penalty for vexatious refusal to pay, and for the further sum of $2,000 as and for attorneys' fees (T. 30).

Prior to the filing of Petitioner's second amended answers and prior to August 28, 1942, the attorneys for the Petitioner Insurance Company appeared before the Superintendent of Insurance of Missouri and contended that the Actuary of the company did not have authority to agree for the company to insert the rubber stamp provision for

Missouri construction, in the company's applications for life policies (T. 122). As a result of the hearing before the Insurance Commissioner, Mr. F. H. Nash as Vice President and General Counsel of the Petitioner wired the Superintendent of Insurance of Missouri (T. 126) that,

> "I AM NOW ASSURED OF A QUORUM OF THE EXECUTIVE COMMITTEE NEXT FRIDAY, AND THAT COMMITTEE WILL VOTE TO AFFIRM. I HAVE ASKED UNDERWRITERS NOT TO RELEASE MISSOURI POLICIES UNTIL I GIVE PERMISSION."

Thereafter, and on August 28, 1942, the General Counsel of Petitioner wrote the Superintendent of Insurance of Missouri enclosing a copy of a resolution of the Executive Committee approving the acts of the company's Actuary from March 4, 1940, on, with respect to the rubber stamp Missouri construction provision in the policies (T. 127, 128, 129).

On December 28, 1942, trials were had in the District Court on the issue of damages for vexatious delay and attorneys' fees, and on January 18, 1943, the Trial Court handed down and entered its finding of fact and conclusion of law in both cases (T. 9-19 inclusive) and on the same day entered judgment in both cases in favor of the Plaintiff Respondent (T. 19, 20 and 21, 22). Thereafter, and on January 27, 1943, the Defendant filed in each case a Motion to set aside Judgment and Order and submitting a form of judgment which the Defendant assertedly believed correctly recited and set forth the action and judgment of the Court in each cause (T. 22-25 inclusive). Said motion was sustained by agreement between parties and new judgments immediately were entered on the form submitted by the Petitioner (T. 27, 28, 30).

The Petitioner appealed from the judgment of the Trial Court, to the United States Circuit Court of Appeals for the Eighth Circuit where the judgment of the Trial Court was affirmed upon condition that Respondent file

remittitur of $2,500 on the $10,000 judgment for attorneys' fees. The Trial Court's memorandum opinion appears at T. 267 to 276 inclusive. The opinion of the United States Circuit Court of Appeals for the Eighth Circuit appears at T. 281 to 287 inclusive. The judgments entered in the Eighth Circuit Court of Appeals appear at T. 287 to 290 inclusive. On November 16, 1943, the United States Circuit Court of Appeals denied Petitioner's Petition for Rehearing (T. 307).

D.

QUESTIONS PRESENTED.

While the questions presented numbering I to IX inclusive at pages 7 to 11 inclusive of Petitioner's petition for writ of certiorari do not present any federal, constitutional or conflict question for this Honorable Court's consideration, but only raises questions purely local, the Petitioner, in its accompanying brief and argument under the heading entitled "Reasons Relied Upon for the Allowance of the Writ" vaguely but not clearly raises the following questions:

(1) The Circuit Court of Appeals held "We find no merit in the plea that construction of the insurance contracts was controlled by Massachusetts law" and such holding is in conflict with certain State Supreme and State Appeals decisions and with *Mutual Life Insurance Company of New York* v. *Liebing*, 259 U. S. 209, 42 S. Ct. 467, 468.

(2) The Circuit Court of Appeals held that the provision in the insurance contracts that they "should be considered Missouri contracts and be construed in accordance with the laws of Missouri was perfectly valid and binding and required the Missouri Court to apply the Missouri law on the trial of the cases in Missouri." Such holding is in conflict with the decision of the Missouri Supreme Court in *Lange* v. *New York Life Insurance Company*, 254 Mo. 488, 498, 162 S. W. 589, and with the decision of this Court in *Mutual*

Life Insurance Company v. *Hill*, 193 U. S. 551, 554, 24 S. Ct. 538.

(3) The Circuit Court of Appeals held that "The suicide provision in each of the policies is in manifest conflict with the public policy of Missouri declared in the Statute and the District Court was in error in sustaining the motion to strike the same where pleaded as constituting no defense in law to the suits on the policies." This holding is in conflict with certain decisions of the Supreme Court of Missouri and with *Mutual Life Insurance Company* v. *Hill*, 193 U. S. 551, 24 S. Ct. 538.

(4) The Circuit Court of Appeals held that Respondents were entitled to recover Missouri statutory penalties and attorneys' fees for vexatious refusal to pay in each case, in addition to the face of the policy, interest and costs in each case. This holding is in conflict with the decision of the Supreme Court of Missouri in *First National Bank* v. *Security Mutual Life Insurance Company*, 283 Mo. 336, 222 S. W. 832, and with the decision of the Kansas City Court of Appeals in *Ayers* v. *Continental Ins. Co.*, 217 S. W. 550 (not officially reported).

E.

SUMMARY OF THE ARGUMENT.

POINT I.

The petition for the writ of certiorari does not conform to Rule 38, Paragraph 2, of this Court for the reason that the petition fails to contain a statement, particularly disclosing the basis upon which it is contended by Petitioner that this Court has jurisdiction (Rule 12, Paragraph 1).

POINT II.

The United States Circuit Court of Appeals properly ruled that the insurance contracts were Missouri contracts and construable in accordance with the laws of the State

of Missouri and such ruling follows and is in accordance with the decisions of the Supreme Court of the United States, and is not in conflict with any controlling decision of this Court.

POINT III.

The United States Circuit Court of Appeals properly ruled that the suicide provision in each of said contracts of insurance were contrary to the expressed public policy of the State of Missouri and could not be enforced in a Federal Court sitting in the State of Missouri, and such ruling follows and is in accordance with the decisions of the Supreme Court of the United States, and is not in conflict with any controlling decision of this Court.

POINT IV.

The question of whether or not the contracts of insurance were Missouri contracts or Massachusetts contracts is not a substantial question affecting the result in these cases because the judgment of the Court of Appeals would have been the same and against the Petitioner in either event, and the judgment would be and is supported by and in accordance with controlling decisions of the Supreme Court of the United States, and would not be in conflict with any such controlling decisions.

POINT V.

There was no federal, constitutional or conflict question involved in the decision of the United States Court of Appeals and this cause is not properly reviewable by this Honorable Court.

F.

ARGUMENT.

POINT I.

The petition for writ of certiorari does not conform to Paragraph 2 of Rule 38 of this Court, in that it fails to contain a statement, particularly disclosing the basis upon which it is contended that this Court has jurisdiction as provided in Paragraph 1 of Rule 12 of this Court.

The petition does not show, by statement, that the nature of the case and the rulings of the Court were such as to bring the case within the jurisdictional provisions relied upon, and does not cite cases to sustain the jurisdiction of this Court. It does not include a statement of the grounds upon which it is contended the questions involved are substantial.

This Honorable Court has repeatedly held that a failure on the part of the Petitioner to comply with the foregoing requirements of this Court's rules will be a sufficient reason for denying the petition. In *Furness* v. *Withy & Company, Limited,* v. *Yang-tsze Insurance Association, Limited, et al.,* 242 U. S. 430, 37 S. Ct. 141, 61 L. Ed. 409, this Court at S. Ct. l. c. 142 said:

> "Such petitions go first to every member of the Court for examination, and are then separately considered in conference. This duty must be promptly discharged. We are not aided by oral arguments, and necessarily rely in an especial way upon petitions, replies, and supporting briefs. Unless these are carefully prepared, contain *appropriate* references to the record, and present with *studied accuracy, brevity, and clearness* whatever is essential to ready and adequate understanding of points requiring our attention, the rights of interested parties may be prejudiced and the Court will be impeded in its efforts properly to dispose of the causes which constantly crowd its docket."

POINT II.

The United States Circuit Court of Appeals properly ruled that the insurance contracts were Missouri contracts and construable in accordance with the laws of the State of Missouri.

The policies expressly provided that the policy and the application therefor constituted the entire contract between the parties and that the policies "shall be considered a Missouri contract and its terms shall be construed in accordance with the laws of the State of Missouri * * *." The applications for the insurance were signed by the Insured in Kansas City, Missouri. The Insured was medically examined for the insurance in Kansas City, Missouri, by a Kansas City physician. The policies were physically delivered to the insureds by the General Agent of the Petitioner Insurance Company. The last act necessary to complete the contract of insurance was not the approval by the insurance company in Boston, pursuant to the alleged binding receipt, but was, in fact, the acceptance of the policy contract by the Insured who, by such acceptance, ratified the changes and amendments noted by the company in the space entitled "Corrections and Amendments" in the application which formed a part of the contract. In each contract under "Corrections and Amendments" appeared the Missouri Construction Amendment requiring that the policies be considered Missouri contracts and construable under its laws.

In the case of *Seeman et al.* v. *Philadelphia Warehouse Co.*, 274 U. S. 403, 47 S. Ct. 626, 627, 71 L. Ed. 1123, this Court held that a Pennsylvania corporation might legitimately lend funds outside the state and stipulate for repayment in Pennsylvania in accordance with its laws.

The Supreme Court of the State of Missouri *En Banc*, affirmed this same rule of contract in the case of *Fidelity Loans Security Co.* v. *Moore*, 280 Mo. 315, 217 S. W. 286,

where at S. W. l. c. 288 and 289, the Court in its opinion said:

> "But, to the real point of the case: The parties had the right to contract, and to agree in such contract that the laws of Texas should govern their contract. This intention of the parties will be carried out by the courts, when they are called upon to enforce the contract. In other words, it is a vital part of the contract. The rule is thus stated in 9 Cyc., pp. 665 and 666:
>
> > 'Where the parties have expressly provided that the contract shall be governed by the law of a particular country, this intention will as a rule be carried out by the courts. Thus where two persons make a contract in England, but by its very terms it is provided that it shall be governed by the laws of Scotland, the law of Scotland then becomes the proper law of the contract, and the law by which it is to be interpreted and its legality decided. Parties may substitute the laws of another place or country than that where the contract is entered into, both in relation to the legality and extent of the original obligation, and in relation to the respective rights of the parties, for a breach or violation of its terms. This is part of the *jus gentium*, and is enforced *ex comitate*, when the enforcement of the contract is sought in the courts of a country governed by a different rule than the local or adopted law of that contract.' "

The United States Circuit Court of Appeals for the Eighth Circuit recognized this firmly established rule of contract in the case of *Federal Security Co.* v. *Minneapolis Steel & Machinery Co.*, 17 F. 2d 242, where the Court in its opinion at l. c. 245, held:

> "The law of the place where the contract is made governs its nature, obligation, and interpretation *unless it appears that the parties when entering into the contract intended to be bound by the law of some other state*" (Italics ours).

See also *Hansen et al.* v. *Duvall et al.*, 62 S. W. 2d 732, l. c. 739, where the Supreme Court of Missouri cites and follows the Supreme Court of the United States in *Seeman* v. *Philadelphia Warehouse Co., supra.*

The Petitioner reaffirmed the Missouri Construction Provision in its contracts and thus agreed that these contracts would be construed under the laws of the State of Missouri, after the filing of its answers and before judgment in the lower Court, by resolution of its Executive Committee, as furnished the Superintendent of Insurance of Missouri.

POINT III.

The United States Circuit Court of Appeals properly ruled that the suicide provision in each of said contracts of insurance were contrary to the expressed public policy of the State of Missouri and could not be enforced in a Federal Court sitting in the State of Missouri.

Section 5851, Revised Statutes of Missouri, 1939, provides:

> "Suicide no defense, when—In all suits upon policies of insurance on life hereafter issued by any company doing business in this state, to a citizen in this State, it shall be no defense that the Insured committed suicide * * * and any stipulation in the policy to the contrary shall be void."

The foregoing Suicide Statute of Missouri has been on the statute books continuously since its first enactment, May 24, 1879, and it has been held constitutional in the face of almost every conceivable attack. It was upheld by the Supreme Court of the United States as early as the year 1907 in the case of *Whitfield ex rel. Hadley* v. *Aetna Life Ins. Co. of Hartford*, 205 U. S. 489, 27 S. Ct. 578, where, concerning the statute, Mr. Justice Harlan, in handing down the opinion of the Court at S. Ct. l. c. 579 said:

> "That the Statute is a legitimate exertion of power by the state can not be successfully disputed. * * * An insurance company is not bound to make a contract which is attended by the results indicated by the statute in question. If it does business at all in the state, it must do so subject to such valid regulations as the state may choose to adopt. Even if the statute in question could be fairly regarded by the Court as inconsistent with public policy or sound morality, it can not, for that reason alone, be disregarded; *for it is the province of the state, by its legislature, to adopt such a policy as it deems best,* provided it does not, in so doing, come into conflict with the Constitution of the state or the Constitution of the United States. There is no such conflict here."

And again at S. Ct. l. c. 580, the Court said:

> "The manifest purpose of the statute was to make all inquiry as to suicide wholly immaterial, except where the insured contemplated suicide at the time he applied for his policy. *Any contract inconsistent with the statute must be held void.* * * * The statute is mandatory and obligatory alike on the insurance company and the assured. Its very object was to prohibit and annul such stipulations in policies, and it cannot be waived or abrogated by any form of contract or by any device whatever. The legislative will, when expressed in the peremptory terms of this statute, is paramount and absolute, and cannot be varied or waived by the private conventions of the parties" (Italics ours).

The Missouri Suicide Statute was last held to be constitutional by the Supreme Court of Missouri in the case of *Edwards* v. *Business Men's Assur. Assn. of America*, 168 S. W. 2d 82.

That the Missouri Suicide Statute *supra* expresses the public policy of the State of Missouri cannot be seriously questioned, and it cannot be questioned but that the provision in the insurance contracts reading "Death within two years from date of policy from suicide, while sane or

insane, shall reduce the company's liability hereunder to the amount of the reserve hereon," is directly contrary to and in conflict with the public policy of the State of Missouri as expressed in the Missouri Suicide Statute. It is now settled that the Federal Courts in diversity of citizenship cases are governed by the conflict of laws rules of the courts of the state in which they sit. See *Griffin* v. *McCoach*, 313 U. S. 498, 503, 61 S. Ct. 1023, 1025, 85 L. Ed. 1481, 134 A. L. R. 1462.

In Missouri the law of another state, or a contract made in another state, and valid under its laws, will be enforced by the courts unless to do so would be contrary to the public policy of the state. See *Burg* v. *Knox*, 334 Mo. 329, 67 S. W. 2d 96, 100.

The Supreme Court of the United States in *Griffin* v. *McCoach supra*, at S. Ct. l. c. 1027 said:

> "It is 'rudimentary' that a state 'will not lend the aid of its Courts to enforce a contract founded upon a foreign law where to do so would be repugnant to good morals, would lead to disturbance and disorganization of the local municipal law, or, in other words, violate the public policy of the state where the enforcement of the foreign contract is sought,' *Bond* v. *Hume*, 243 U. S. 21; 37 S. Ct. 366; 368, 61 L. Ed. 565" * * *. "It is for the state to say whether a contract contrary to such a statute or rule of law is so offensive to its view of public welfare as to require its Courts to close their doors to its enforcement."

And again at S. Ct. l. c. 1027, the Supreme Court said:

> "Where this Court has required the state of the forum to apply the foreign law under the full faith and credit clause or under the Fourteenth Amendment it has recognized that a state is not required to enforce a law obnoxious to its public policy."

From the foregoing, it is crystal clear that the suicide provision in each of the insurance contracts was in

direct conflict with the public policy of the State of Missouri, and the Federal Court of Appeals in its opinion properly ruled the question. The ruling is obviously in line with and not in conflict with the decisions of the Supreme Court of Missouri or the Supreme Court of the United States.

POINT IV.

The question of whether or not the contracts of insurance were Missouri or Massachusetts contracts, is not a substantial question affecting the result in these cases.

The Court of Appeals in its opinion in affirming the judgment of the Trial Court in favor of these Respondents, incidentally held that the contracts of insurance were Missouri contracts. We submit the contracts are Missouri contracts, however, the result would have been the same if the Court of Appeals had held that the contracts were Massachusetts contracts because the defense of suicide as raised by the petitioner was not available to it in the face of the public policy of the State of Missouri, and particularly it could not be asserted in a Federal Court sitting in the State of Missouri as in the instant case, in the light of the decisions and cases cited under Point III of this brief. In the interest of brevity we do not here recite said cases.

POINT V.

There was no federal, constitutional or conflict question involved in the decision of the United States Circuit Court of Appeals.

The cases cited by the Petitioner in its brief in support of its petition for certiorari are in no sense in conflict with the ruling of the Federal Court of Appeals in this proceeding. Petitioner has insisted that the so-called "binding receipt" cases and decisions of the Supreme Court of Missouri and Appellate Courts are applicable to the cases at Bar. They are not in point with the

cases at Bar because the facts disclose that the acts of the Petitioner in providing in its contracts of insurance that the contracts would be Missouri contracts and construable under the laws of the State of Missouri, was for the express purpose of forever waiving the right to claim the contracts were anything other than Missouri contracts and Petitioner should not now be heard to claim otherwise. In as much as this is the first recorded proceeding on contracts of insurance containing such a Missouri construction provision, and the previous decisions on so-called binding receipt insurance contracts did not consider such a contract provision, it cannot reasonably be contended by Petitioner that those cases are in point or in conflict with the case at Bar.

CONCLUSION.

For all the foregoing reasons we respectfully submit that the Petition for Writ of Certiorari should be denied for failure to comply with the rules of this Court; for the reason that no substantial federal question is properly before this Court; and for the reason that the decision of the lower Court is sound and in harmony with and not in conflict with the opinions of the Supreme Court of Missouri and of this Honorable Court.

Respectfully submitted,

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